

Practitioner's Docket No. 00451-0065



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re application of: LANE, Michael J. et al.**

**Serial No.: 09/747,164**

**Title: METHODS AND COMPOSITIONS FOR MODULATING  
"Marginally Indiscriminant" Hybridization**

**Filed: December 22, 2000**

**STATEMENT BY PERSON HAVING FIRST HAND KNOWLEDGE  
THAT NONSIGNING INVENTOR WAS EMPLOYEE  
OR OTHERWISE OBLIGATED TO PERSON  
WITH SUFFICIENT PROPRIETARY INTEREST WHEN INVENTION MADE**

I, **Richard A. Janeczko**, of 3 Highbourne Road, Toronto, Ontario M5P 2J1, Canada, make this statement in support of the STATEMENT ESTABLISHING PROPRIETARY INTEREST BY PERSON SIGNING ON BEHALF OF NONSIGNING INVENTOR in this application, which I have read.

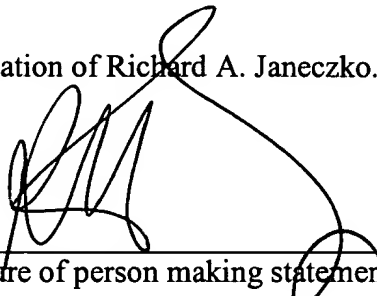
I have also read the above-identified specification and claims.

I confirm that I have first hand knowledge that the omitted inventors made the above-identified invention while in the employ of or otherwise obligated to the entity showing a proprietary interest that I now set forth:

Please see attached Statutory Declaration of Richard A. Janeczko.

Date:

Aug 30, 2001

  
\_\_\_\_\_  
Signature of person making statement

Practitioner's Docket No. 00451-0065



#3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re application of: LANE, Michael J. et al.**

**Serial No.: 09/747,164**

**Title: METHODS AND COMPOSITIONS FOR MODULATING  
"Marginally Indiscriminant" Hybridization**

**Filed: December 22, 2000**

**ADDED PAGE TO COMBINED DECLARATION AND POWER OF  
ATTORNEY FOR SIGNATURE BY PERSON WITH SUFFICIENT  
PROPRIETARY INTEREST WHERE NO INVENTOR IS AVAILABLE TO  
SIGN AND ON BEHALF OF ALL INVENTOR(S) WHO REFUSE(S) TO  
SIGN OR CANNOT BE REACHED (37 C.F.R. § 1.47(b))**

**I, Richard A. Janeczko, hereby declare that:**

I am a citizen of the United Kingdom residing at 3 Highbourne Road, Toronto, Ontario  
M5P 2J1, Canada.

I am authorized as Vice President, Business Development of **TM Technologies Inc.**,  
formerly located at 82 Cummings Park, Woburn, Massachusetts 01801, U.S.A., a juristic entity  
with sufficient proprietary interest, to sign this declaration on behalf of, and as agent for **Michael  
J. Lane**, a citizen of the United States of America, whose last known address is 3044 Claybourne  
Lane, Baldwinsville, New York 13027, U.S.A. and **Brian S. Faldasz**, a citizen of the United  
States of America, whose last known address is 89 Witcomb Avenue, Littleton, Massachusetts  
01460, U.S.A., both of whom are nonsigning inventors who refused to sign the combined  
Declaration and Power of Attorney.

Upon information and belief, I aver those facts that the inventor is required to state, 37 C.F.R. § 1.64(b).

Accompanying this declaration is:

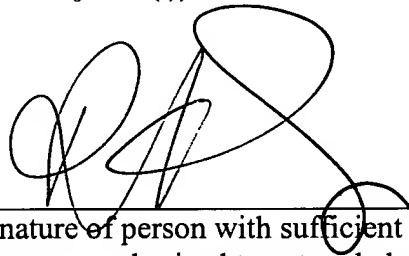
- (1) A STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR IN THE FORM OF A STATUTORY DECLARATION, and
- (2) A STATEMENT BY PERSON SIGNING ON BEHALF OF NONSIGNING INVENTOR ESTABLISHING PROPRIETARY INTEREST.

To establish proof of pertinent facts, and to show that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, and

- (3) the petition fee of \$130.00. (37 C.F.R. § 1.17(i))

Date:

30th Aug  
2001

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a series of loops and a final flourish.

Signature of person with sufficient proprietary interest or authorized to act on behalf of such person or entity.

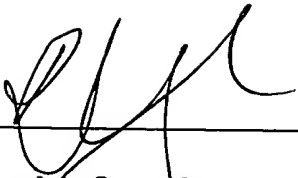


STATUTORY DECLARATION OF RICHARD A. JANECKO

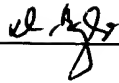
I, **RICHARD A. JANECKO**, residing at 3 Highbourne Road, in the city of Toronto, in the province of Ontario, hereby declare as follows:

1. I am the Vice President, Business Development for **Tm Technologies Inc.** (the "Corporation"), formerly located at 82 Cummings Park, Woburn, Massachusetts 01801, United States of America.
2. The Corporation is the Assignee of record for U.S. patent application number 09/747,165.
3. I have had day to day carriage of this matter from the outset and as such have knowledge of the matters referred to herein.
4. On December 22, 2000, an application for U.S. patent serial number 09/747,165 relating to an invention entitled METHODS AND COMPOSITIONS FOR MODULATING "Marginally Indiscriminant" Hybridization was filed.
5. U.S. patent application number 09/747,165 is a continuation of U.S. patent application number 09/534,432 filed March 23, 2000, which is a continuation of U.S. patent application number 09/366,085 filed August 3, 1999, which claims priority from U.S. provisional patent application number 60/095,313 filed August 4, 1998.
6. U.S. patent application number 09/747,165, and all prior applications related thereto were filed in the names of Michael J. Lane (Lane), Albert S. Benight (Benight), and Brian D. Faldasz (Faldasz) as inventors, each of whom was employed by the Corporation at the relevant time.
7. Each of Lane, Benight and Faldasz has assigned their complete rights to the invention and any patent applications relating thereto to the Corporation. Such Assignment was recorded in the United States Patent and Trademark Office on October 14, 1998 under Reel/Frame number 9533/0835. Attached hereto and marked as Exhibit "A" (Tab A) to this statutory declaration is a copy of the Assignment.
8. In April 1999, Lane, Benight and Faldasz were released from the employ of the Corporation. Benight was retained as a consultant.
9. The Corporation attempted on November 10, 1999 to have a Declaration, Petition, and Power of Attorney executed for U.S. patent application number 09/366,085 by each of Lane, Benight, and Faldasz. Attached hereto and marked as Exhibit "B" (Tab B) to this statutory declaration is a copy of correspondence requesting that such Declaration, Petition and Power of Attorney to each of Lane and Faldasz be signed and returned for filing in the United States Patent and Trademark Office to meet the requirements of a "Notice to File Missing Parts of Application-Filing Date Granted".

10. Benight executed and returned the Declaration, Petition and Power of Attorney. Attached hereto and marked as Exhibit "C" (Tab C) is a copy of the executed and returned Declaration, Petition, and Power of Attorney by Benight.
11. Due to the refusal of Lane and Faldasz to execute and return the Declaration, Petition and Power of Attorney, U.S. patent application number 09/366,085 was abandoned in favor of U.S. continuation application number 09/534,432.
12. Another attempt was made to have a Declaration, Petition, and Power of Attorney executed for U.S. patent application number 09/534,432 by each of Lane, Benight, and Faldasz.
13. Due to the refusal of Lane and Faldasz to execute and return the Declaration, petition and Power of Attorney, U.S. patent application number 09/534,432 was abandoned in favor of U.S. continuation patent application number 09/747,165.
14. Another attempt was made on May 14, 2001 to obtain a fully executed Declaration and Power of Attorney for U.S. continuation application number 09/747,165 from Lane, Benight and Faldasz.
15. Our patent agent forwarded, by both registered mail and overnight courier (Federal Express), the necessary documents, which included a Declaration and Power of Attorney to be executed and returned for filing in the United States Patent and Trademark Office. Attached hereto and marked as Exhibit "D" (Tab D) are copies of the correspondence from our patent agent to each of Lane, Benight and Faldasz requesting each of them to execute and return the Declaration and Power of Attorney. Attached hereto and marked as exhibit "E" (Tab E) are copies of the courier tracking receipts showing that the documents were received by a person at the last known address of the nonsigning inventors.
16. Lane and Faldasz have refused to execute the Declaration and Power of Attorney.
17. Benight has executed and returned the Declaration and Power of Attorney. Attached hereto and marked as Exhibit "F" (Tab F) is a copy of the executed Declaration and Power of Attorney from Benight.
18. I do verily believe that every diligent effort has been made to obtain an executed Declaration and Power of Attorney from each of Lane and Faldasz.
19. Corresponding applications have been filed in Europe (EP patent application number 99940875.0) and Japan (JP patent application number 2000-563833) both of which have been laid-open to the public. As such, failure to proceed with the prosecution of U.S. patent application number 09/747,165 will jeopardize the patentability in the U.S. of the subject invention under USC § 102.
20. I make this statutory declaration for no improper purpose.

  
\_\_\_\_\_  
**Richard A. Janeczko**  
**Vice-President, Business Development**  
**TM Technologies Inc.**

Date: May 30, 2001

  
\_\_\_\_\_  
**Witness**

Date: May 30 2001

Practitioner's Docket No. 00451-0065



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re application of: LANE, Michael J. et al**

**Serial No.: 09/747,164**

**Title: METHODS AND COMPOSITIONS FOR MODULATING  
"Marginally Indiscriminant" Hybridization**

**Filed: December 22, 2000**

**STATEMENT ESTABLISHING PROPRIETARY INTEREST BY PERSON  
SIGNING ON BEHALF OF NONSIGNING INVENTOR**

I, **Richard A. Janeczko** residing at 3 Highbourne Road, Toronto, Ontario M5P 2J1, Canada am the person signing the declaration in the above-identified application on behalf of the nonsigning inventor and make this statement as to the facts establishing my proprietary interest

As of the date I signed the declaration for this application, the proprietary interest in this invention belonged to **TM Technologies Inc.**, the juristic entity, formerly located at 82 Cummings Park, Woburn, Massachusetts 01801, U.S.A. and as Vice President, Business Development, I am authorized to sign the statement on behalf of the juristic entity.

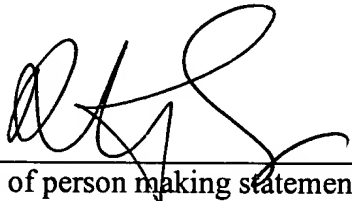
I establish the proprietary interest by attaching a copy of the assignment of this invention to **TM Technologies Inc.** (the "Assignee"), by the nonsigning inventor.

In accordance with 37 C.F.R. § 3.73, the Assignee hereby states that the evidentiary documents with respect to its ownership have been reviewed and that, to the best of Assignee's knowledge and belief, title is in the Assignee seeking to take this action.

Proof of need to prevent irreparable damage or preserve the rights of the parties has been omitted as it is completed in the Statutory Declaration of Richard A. Janeczko.

Date:

Aug 20, 2001

  
\_\_\_\_\_  
Signature of person making statement



Practitioner's Docket No. 00451-0065



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re application of: LANE, Michael J. et al.**

**Serial No.: 09/747,164**

**Title: METHODS AND COMPOSITIONS FOR MODULATING  
"Marginally Indiscriminant" Hybridization**

**Filed: December 22, 2000**

**STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING  
INVENTOR (37 C.F.R. § 1.47)**

This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the nonsigning inventor for the above-identified patent application before deposit thereof in the Patent and Trademark Office because signing on behalf of the nonsigning inventor is by a person or entity showing a sufficient proprietary interest, this statement also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

This statement is being made by the available person having first-hand knowledge of the facts recited therein.

**IDENTIFICATION OF PERSON MAKING THIS STATEMENT OF FACTS**

**Richard A. Janeczko**, Vice President, Business Development, 3 Highbourne Road, Toronto, Ontario M5P 2J1, Canada.

**LAST KNOWN ADDRESS OF THE NONSIGNING INVENTORS**

I. **Michael J. Lane**, 3044 Claybourne Lane, Baldwinsville, New York 13027, U.S.A.

II. **Brian S. Faldasz**, 89 Whitcomb Avenue, Littleton, MD 01460, U.S.A.

**DETAILS OF REFUSAL OF NONSIGNING INVENTOR  
TO SIGN APPLICATION PAPERS**

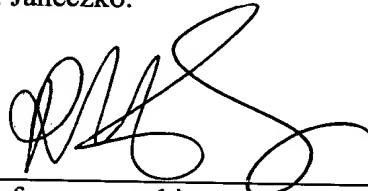
Please see attached Statutory Declaration of Richard A. Janeczko..

**PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE  
OR PRESERVE THE RIGHTS OF THE PARTIES**

Please see attached Statutory Declaration of Richard A. Janeczko.

Date:

Aug 30, 2001



\_\_\_\_\_  
Signature of person making statement